Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1037

FRED RENWICK,

Petitioner-Plaintiff,

—v.—

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT,

—and—

JANICE RENWICK, FRANCIS A. NICOLAI, THE LAW FIRM OF ZEBROWSKI & NICOLAI, EDITH MILLER, MORTON B. SILBERMAN,

Respondents.

MOTION FOR LEAVE TO FILE PETITION, AND PETITION [redacted] FOR WRIT OF MANDAMUS OR FOR COMMON LAW WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

Dated: January 20, 1978

FRED RENWICK,
Plaintiff-Petitioner Pro Se

Address: 195 South Sierra Street,
#310
Reno, Nevada 89501

Telephone: 702-329-6251

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MOTION FOR LEAVE TO FILE PETITION FOR DETERMINATION OR FOR WRIT OF MANDAMUS OR FOR COMMON LAW WRIT OF CERTIORARI TO COURT OF APPEALS FOR THE SECOND CIRCUIT

Pursuant to Rule 31 of S. Ct. Rules, and Affidavit herewith annexed, Fred Renwick, petitioner herein, appearing personally pursuant to Title 28, U.S.C., Section 1654, moves this Court as follows:

1. For leave to file the petition, hereto annexed, for determination or for writ of mandamus or for common law writ of certiorari.

2. Upon granting such leave, to determine herein, in this Court, petitioner's issues and complaint filed in the lower

courts, or in the alternative, issue a writ of mandamus or common law writ of certiorari, whichever this Court determines to be appropriate, directed to the United States Court of Appeals for the Second Circuit to entertain, not dismiss, petitioner's appeal, in accordance with the prayer in Section VI of said petition.

Dated: 20 day of January, 1978.

Signed: FRED RENWICK

Address: 195 South Sierra Street, #310
Reno, Nevada 89501

Telephone: 702-329-6251

IN THE

Supreme Court of the United States

October Term, 1977

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Petitioner,

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT,

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JANICE RENWICK, FRANCIS A. NICOLAI, THE LAW FIRM OF ZEBROWSKI & NICOLAI, EDITH MILLER, MORTON B. SILBERMAN,

Respondents.

PETITION FOR DETERMINATION OR WRIT OF MANDAMUS OR FOR COMMON LAW WRIT OF CERTIORARI TO COURT OF APPEALS FOR THE SECOND CIRCUIT

Fred Renwick, petitioner herein, appearing personally pursuant to Title 28, U.S.C., Section 1654, petitions this Court for review and determination, pursuant to Title 42, U.S.C., Section 1984 and Title 28, U.S.C., Section 2106, or in the alternative and in the discretion of this Court, to issue a writ of mandamus or any writ of certiorari, pursuant to Title 28, U.S.C., Section 1254(1) or 1651(a), Rule 30 of S. Ct. Rules, to respondent Court of Appeals, and shows as follows:

I.

Jurisdiction

1. Jurisdiction to grant review and determination or a writ of mandamus or common law or statutory writ of certiorari to the Court of Appeals, sought by petitioner herein, is conferred on this Court by:

(a) Provisions of U. S. Constitution: Article III, Section 2, Clauses 1 and 2, pursuant to Article IV, Section 1; Article VI, Clauses 2 and 3; Amendments 1, 9, 14, Section 1; and

(b) Laws of the United States: Title 28, U.S.C., Sections 1254(1), 1343, 1651(a), 2106; Title 42, U.S.C., Sections 1983, 1984; and

(c) Judicial power and jurisdiction to effectuate and enforce own mandates, pursuant to 98 L. Ed. 114, Rule 30 of S. Ct. Rules, Rule 21 of FRAP; Rule 81(b) of FRCiv.P, and the authority: ". . . Mandamus lies where an inferior court refuses to take jurisdiction, when by law it ought to do so, or when, having obtained jurisdiction, it refuses to proceed in its exercise." *Re Parker,* 131 U.S. 221 (1888) and 120 U.S. 737 (1886).

2. Alternative possible remedies elsewhere not withstanding, original and appellate jurisdiction of a federal court to grant declaratory, injunctive and other redress and relief, sought by petitioner herein, for the deprivation of his rights under color of law, pursuant to Title 42, U.S.C., Section 1983, lies and is maintainable in federal court regardless of either diversity of citizenship or of jurisdictional amount, pursuant to Title 28, U.S.C., Sections 1331, 1343; *England* v. *Medical Examiners,* 375 U.S. 411; *Redding* v. *Pate,* 220 F. Supp. 124; *Hander* v. *San Jacinto Junior College,* 522 F. 2d 204 at 205; *Like* v. *Carter,* 448 F. 2d 798, certiorari denied, 405 U.S. 1045.

II.

Questions Presented

1. Whether the U. S. Supreme Court has jurisdiction for review and determination herein, on the basis of petitioner's statutory rights to review pursuant to Title 42, U.S.C., Section 1984 or Title 28, U.S.C., Section 2106; or in the alternative, to issue a writ of mandamus or statutory or common law writ of certiorari, pursuant to Title 28, U.S.C., Section 1254(1), 1651(a), directed to the Court of Appeals, on the basis that said respondent Court of Appeals erred or abused its discretion in dismissing and declining to allow an appeal from the dismissal order of District Court.

2. Whether the respondent Court of Appeals erred or abused its discretion in finding that petitioner is *not* entitled to declaratory and other relief demanded as a matter of law, and in determining that subject matter and every claim of the six in petitioner's complaint are "frivolous and absolutely devoid of merit" under the Constitution, Laws and in the Judicial System of the United States, and in dismissing petitioner's complaint.

3. Whether this Court should exercise its statutory jurisdiction for review and determination; or in the alternative, in its discretion, to issue a writ of mandamus or a common law or statutory writ of certiorari to the respondent Court of Appeals.

III.

Constitutional Provisions and Statutes Involved

A. Constitutional Provisions

U. S. Constitution, Article III, Section 2, Clauses 1 and 2; Article IV, Section 1; Article VI, Clauses 2 and 3; Amendments 1, 9, 14, Section 1; all copied and set forth as follows:

1. U. S. Constitution, Article III, Section 2, Clause 1: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, . . .",

2. Article III, Section 2, Clause 2: ". . . In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

3. Article IV, Section 1: "Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. . . .",

4. Article VI, Clause 2: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . , shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws on any State to the Contrary notwithstanding."

5. Article VI, Clause 3: ". . . all the executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; . . .".

6. Amendment 1: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceable to assemble, and to petition the Government for a redress of grievances."

7. Amendment 9: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

8. Amendment 14, Section 1: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. Statutes

Title 28, U.S.C., Sections 1254(1), 1343(3, 4), 1651(a), 2106, 2201, 2202; Title 42, U.S.C., Sections 1983, 1984; copied and set forth as follows:

1. Title 28, U.S.C., Section 1254(1): "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; . . ."

2. Title 28, U.S.C., Section 1343(3, 4): "The district courts shall have original jurisdiction of any civil action

authorized by law to be commenced by any person: . . . (3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or useage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

3. Title 28, U.S.C., Section 1651(a): "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

4. Title 28, U.S.C., Section 2106: "Determination. The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

5. Title 42, U.S.C. Section 1983: "Civil action for deprivation of rights. Every person who, under color of and statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

6. Title 42, U.S.C., Section 1984: "Same; review of proceedings. All cases arising under the provisions of this Act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court.

IV.

Statement of Petitioner's Case

1. This petition is filed pursuant to the authority for review and determination, Title 42 U.S.C., Section 1984 and Title 28, U.S.C., Section 2106; or in the alternative, in the discretion of this Court, to issue certiorari or extraordinary writs vested in this Court by the provisions of Title 28, U.S.C., Sections 1254(1) and 1651(a), and Rule 30 of the Rules of this Court, to review the order of the U. S. Court of Appeals for the Second Circuit, declining to allow an appeal from the judgments of the District Court entered on May 23 and June 10, 1977, summarily dismissing and refusing determination and entry of declaratory judgement as demanded and set forth in prayer of this petition.

2. The original action and complaint filed but dismissed in District Court arose under the U.S. Constitution, particularly under the provisions of Article IV, VI and Amendments 1, 9, 14, and under federal law, particularly Title 42, U.S.C., Section 1983, where petitioner demanded declaratory relief and summary judgment on the issues of liability for redress as provided by law, 1983, against defendants herein named for deprivation on each of six claims of rights privileges, or immunites secured by aforesaid Articles and Amendments to the U. S. Constitution.

3. Petitioner presented the four following questions to District Court and respondent Court of Appeals:

(a) Whether federal court has jurisdiction to maintain petitioner's cause of action and grant declaratory and other relief pursuant to law under 1983 and Title 28, U.S.C., Section 1343 (3, 4), on the basis that petitioner shows in his complaint that his claims and causes of action are not frivolous, and on the basis that petitioner's complaint meets all three requirements in respondent Court of Appeals' own mandate, namely: "... To maintain a cause of action under 1983 plaintiff must show: 1) that he has been deprived of a right, privilege, or immunity secured by the Constitution and laws of the United States; 2) that the defendants subjected plaintiff to this deprivation, or 'cause(d)' him to be so subjected; and 3) that the defendants acted 'under color of any statute, ordinance, regulation, custom, or useage, of any State * * *'" *Kletschka* v. *Driver*, 411 F. 2d 436 at 447 (1969); and on the basis that *England* v. *Medical Examiners*, supra, authorizes that federal claims can be litigated in federal courts, notwithstanding possible alternative remedies elsewhere.

(b) Whether District Court erred or abused its discretion in dismissing petitioner's claims and complaints, and whether said claims and complaints are, or can be frivolous, on the basis that, pursuant to *Kletschka*, supra, 1) each right of the six refused or denied to Fred Renwick was secured by the Constitution and Laws of the United States, and no frivolous rights are so secured, 2) each claim of the six is admitted by defendants, and no claim is frivolous where State Court Judicial Officers admit using the power of their office to deprive persons of rights secured and guaranteed by the Constitution and Laws of the United States, 3) Useage of State law, and actions taken under color of law, to deprive persons of secured rights is illegal

and *not* frivolous, pursuant to 1983; and is *not* outside federal subject matter jurisdiction as set forth in Constitutional mandates and Laws cited in Section I hereinbefore.

(c) Whether the acts and Orders made by defendant Judicial Officers and complained of herein were in fact Judicial Acts, done within Judicial discretion, and whether each and all defendants herein named shall be liable to the party injured, Fred Renwick, in an action at law, suit in equity, or other proper proceeding for redress, as a matter of law, pursuant to 1983.

(d) Whether the Court of Appeals for the Second Circuit should and must exercise its statutory jurisdiction and discretion to determine each of the six aforesaid claims and complaints, and grant declaratory and other relief demanded, certifying that the foregoing is true, and that petitioner is entitled to relief, redress and restitution pursuant to provisions of 1983, against each defendant herein named, as a matter of law.

4. A copy of District Court's said judgment and of Court of Appeals' said order is set forth in the Appendix to this petition, together with a copy of the District Court's opinion rendered in connection with its judgment.

5. Pursuant to S. Ct. Rule 31(2), a certified copy of the record in this case is unimportant to file at this time, on the basis that all necessary facts, points and authorities pertinent to determination of the questions presented herein and in the courts below are set forth either herein or in petitioner's Affidavit annexed herewith in the Appendix.

6. The relief sought by petitioner herein is the same in either case, determination instantly by this Court, pursuant

to Title 42, U.S.C., Section 1984 and Title 28, U.S.C., Section 2106; or in the alternative and in the discretion of this Court, either writ of mandamus or any writ of certiorari directed to respondent Court of Appeals, namely relief set forth in prayer hereinafter. The sole difference in which Court renders determination and relief is one of procedure.

7. If determination is ordered in one of the lower courts, petitioner would have the benefit of certiorari review in this Court in case of an unfavorable decision.

8. Conversely, petitioner is seeking instantly, and is willing to accept as the unchallengeable law of the land, this Court's determination, now, of the questions presented.

V.

Reasons Petitioner Relies on for Allowance of the Writs

Summary of Five reasons: (i) no other remedy, (ii) petitioner clearly is entitled to relief demanded, (iii) defendants clearly are obliged to submit to review by U. S. Supreme Court, (iv) defendants are not immune from civil suit and clearly are liable to petitioner under 1983, (v) Court clearly is obligated under U. S. Constitutional mandate to effectuate and enforce existing federal laws and statutes; as follows:

1. The review and determination and declaratory relief herein sought is available, and there is an adequate remedy, by way of appeal to the Court of Appeals for the Second Circuit, and writ of certiorari to this Court. However, respondent Court of Appeals has dismissed petitioner's appeal, claiming that it has discretionary power to do so.

Petitioner therefore has no recourse to obtain review of U. S. District Court's summary dismissal judgment herein other than by application for review and determination to this Court, or for issuance by this Court of a writ of mandamus or a common law writ of certiorari directed to respondent Court of Appeals and, in the event of an unfavorable decision in the lower court, a subsequent application to this Court for a writ of certiorari.

2. Pursuant to Title 42, U.S.C., Section 1984, petitioner clearly is entitled to review, determination sought herein, and is entitled either here or in a lower court, to summary judgment and declaratory relief to the extent set forth in prayer of this petition as a matter of law, for the four following reasons:

(a) The pleadings and evidence adduced herein and in Affidavit herewith annexed meet the necessary and sufficient mandated requirements of paragraph (15) of *Kletschka,* supra.

(b) The acts of defendants, individually and in concert constitute an illegal deprivation of the rights of petitioner, Fred Renwick, under color of law, in violation of Title 28, U.S.C., Section 1343(3) and Title 42, U.S.C., Section 1983, pursuant to authorities cited in Section IV of Affidavit herewith annexed.

(c) The pleadings and evidence adduced herein and in aforesaid Affidavit show that the defendant State Court Officials and persons herein named, acting under color of State law, have deprived petitioner, Fred Renwick, of his liberty, property, parental and secured custody rights without due process of law, and have unreasonably and illegally interfered with the right of petitioner to hold specific employment and to follow his chosen profession. The defendant State Court Officials and persons herein

named have, without duly authorized notice or hearing, illegally used State Law to sell petitioner's home, property; split his family; take his children and send them to live in Cleveland Heights, Ohio with no visitation, custody or companionship; garnisheed petitioner's income, and got him fired. Petitioner contends that his property, home, family, children, career, employment, Constitutional rights of liberty, good name, all are important, not frivolous, issues, and appeals to this Court for review and determination, on the basis that said refusals and acts of deprivation perpetrated by defendants herein named are prohibited by the Constitution of the United States, Articles VI, Clauses 2 and 3 and Amendment 14, Section 1. Federal law, pursuant to Title 42, U.S.C., Section 1983 and 28 U.S.C., Section 1343(3, 4), authorizes jurisdiction and provides remedies sought by petitioner herein. Petitioner is entitled as a matter of law to summary judgment to be entered in his favor to the extent set forth in prayer hereinafter.

(d) No genuine triable issue of material fact exists, and petitioner is entitled as a matter of law to declaratory relief and summary judgment to be entered declaring the acts of defendants to be invalid, illegal, and in deprivation of those rights secured to petitioner, Fred Renwick, by the United States Constitution. Wherefore, petitioner prays for the aforesaid summary judgment to be so entered.

3. Every defendant person herein named, and all five of them, clearly is obligated to submit to review and determination herein, on the basis that:

(a) Federal law, Title 42, U.S.C., Section 1983, as quoted in paragraph 5, Section III hereinbefore, includes "every person."

(b) Defendant Law Firm of Zebrowski & Nicolai, even if a corporation, clearly and beyond controversy is a

"person" within application of due process clauses of fifth and fourteenth Amendments, and for due process and equal protection deprivations, within meaning of civil rights act, 42, U.S.C.A., Section 1983, pursuant to *Borreca* v. *Fasi*, 369 F. Supp. 906 at 906, 911 (1974); *People* v. *B.N.B. Realty Corp.*, 379 N.Y.S. 2d 324 at 325, 326 (1976); *Adickes* v. *Kress & Co.*, 398 U.S. 144 at 150; *Adams* v. *City of Park Ridge*, 293 F. 2d 585 at 587; *Mullarky* v. *Borglum*, 323 F. Supp. 1218 at 1224; *United States* v. *Price*, 383 U.S. at 789. District Court clearly erred in determining that any defendant herein named is *not* a "person", pursuant to the aforecited Authorities.

(c) The state has no power to impart to its officer immunity from responsibility to the supreme authority of the United States, pursuant to Article VI, Clauses 2 and 3, U. S. Constitution, and *Ex-parte Young*, 209 U.S. 123 at 143 (1908).

4. Every defendant person herein named clearly is liable under 1983 to the party injured, Fred Renwick, and defendant state court officials, Silberman, Miller, Nicolai and the Law Firm of Zebrowski & Nicolai, clearly possess no immunity from liability by virtue of their office or status for relief from acts complained of herein, and from summary declaratory judgment relief sought by petitioner in the entire case, for the three following reasons:

(a) No judicial jurisdiction extends or exists to do acts, and acts are void, if prohibited by the Constitution and Laws of the United States. The Supremacy Clause, Article, VI, Clause 2, requires prohibition of the application of state laws where there is a clear collision between federal law and the application of an otherwise valid state enactment; a state law, however clearly within a state's acknowledged power, which interfered with or is contrary

to federal law is void under the supremacy clause of U. S. Constitution, by authority of: *Kesler* v. *Department of Safety,* 369 U.S. 153, 172 (1962); *Sail'er Inn* v. *Kirby,* 485 P. 2d 529 at 530, 534, 535; *Hill* v. *Florida,* 325 U.S. 538 (1945); *Hamm* v. *Rock Hill,* 379 U.S. 306 (1964).

(b) No immunity from civil suit pursuant to 1983 extends or exists by virtue of office for acts done wholly without jurisdiction, or for acts and orders prohibited by the Constitution and Laws of the United States, or for the practice of anti-constitutional law; whether the act done by him was judicial or not is to be determined by its character, not by the character of the agent, by authority of Supremacy Clause, Article VI, Clauses 2 and 3, U.S. Constitution; *Ex-parte Virginia,* 100 U.S. 339 at 348 (1879); *Ex-parte Wall,* 107 U.S. 265 (1882). "Even if New York law does grant defendants immunity this would not be binding on a federal court in an action brought under 1983," pursuant to respondent Court of Appeals' own mandate, paragraph (19) of *Kletschka* v. *Driver,* 411 F. 2d 436 at 448 (1969); District Court clearly erred in determining that the defendant Judicial Officers herein named "are immune from suit for damages", and in dismissing petitioner's complaint.

(c) Every act of the six complained of herein and in the courts below, was prohibited by the Constitution and Laws of the United States, on the basis that states are forbidden by the 14th Amendment from denying persons equal protection of the laws, pursuant to *Plessy* v. *Ferguson,* 163 U.S. 537 at 543 (1896); *Male* v. *Crossroads Associates,* 320 F. Supp. 141; and more authorities set forth in Section IV of Affidavit herewith annexed.

5. Finally, pursuant to Article III, Section 2, Clauses 1 and 2; Title 28, U.S.C., Section 1343(3, 4); Title 42, U.S.C., Sections 1983, 1984; *Re Parker,* supra, *Ex-parte Young,*

209 U.S. 123 at 135, 143 (1908); *Ex-parte Virginia,* 100 U.S. 339 at 346 (1879); *Boddie* v. *Conn.,* 401 U.S. 371 (1971); *England* v. *Medical Examiners,* 375 U.S. 411; this court's statutory duty is clear and court must act to grant either determination herein now, or in the alternative, in the discretion of this Court, a writ of mandamus or a writ of certiorari as demanded in prayer hereinafter. Federal courts have granted previously to similarly deprived persons as petitioner herein declaratory and other relief of restitution and of expunging and voiding unconstitutional records and state court orders in the cases of *Bivens* v. *Six Agents,* 403 U.S. 388; *Monroe* v. *Pape,* 365 U.S. 167, *Bell* v. *Hood,* 327 U.S. 678; *Ex-Parte Wall,* 107 U.S. 265 (1882); *Warren* v. *National Assoc. of Secondary School Principals,* 375 F. Supp. 1043. Absolutely no cause exists for this Court to refuse to accept jurisdiction, enforce or effectuate existing laws and statutes cited herein, and grant petitioner's prayer immediately following, to which petitioner is entitled, as a matter of law.

VI.

Conclusion, Relief

Wherefore, petitioner prays that this Court:

1. Enter an order and summary declaratory judgment on the issue of liability alone, pursuant to Title 42 U.S.C. Section 1983 and Rule 56 of FRCiv.P., declaring the acts of defendants herein named to be invalid, illegal, and in deprivation of those rights secured to petitioner, Fred Renwick, by the Constitution and Laws of the United States; and certifying as true that Fred Renwick has suffered deprivations of rights under color of law; and that Fred Renwick is entitled to redress, pursuant to 1983, as a matter of law, with the amount of damages and restitution to be

determined in other and further proper proceedings, pursuant to Title 28, U.S.C., Sections 2106, 2201, 2202; and that no immunity extends, by virtue of office, to any defendant person herein named, or

2. In the alternative, in the discretion of this Court, issue a writ of mandamus or any writ of certiorari, whichever this Court finds appropriate, directed to respondent Court of Appeals, to entertain petitioner's appeals filed therein and herein, and enter an order granting the preceeding said relief, and

3. Grant and issue such other and fu ther relief as it deems proper and just.

Dated: January 20, 1978

Respectfully submitted,

Signed: Fred Renwick
Address: 195 South Sierra Street, #310
Reno, Nevada 89501

Telephone: 702-329-6251

Affidavit, Proof of Service

In the

Supreme Court of the United States

October Term, 1977

No. .....

Fred Renwick,

Petitioner-Plaintiff,

—v.—

United States Court of Appeals for the Second Circuit,

—and—

Janice Renwick, Francis A. Nicolai, The Law Firm of Zebrowski & Nicolai, Edith Miller, Morton B. Silberman,

Respondents.

State of .....
County of .....

I, Fred Renwick, despose and say that I am plaintiff-petitioner pro se herein, appearing personally pursuant to Title 28, U.S.C., Section 1654, and that on the ..... day of January, 1978, pursuant to Rules 31(3) and 33, Rules of the Supreme Court, I served three copies of the attached motion, petition and appendices to the Supreme Court of the United States on each of the parties required to be served herein, as follows:

On Honorable Milton Pollack, Judge of the U.S. District Court for the Southern District of New York, by mailing

the copies in a duly addressed envelope, with first class postage prepaid at his office at U. S. Court House, Foley Square, New York, New York 10007.

On Janice Renwick, Francis A. Nicolai and the Law Firm of Zebrowski & Nicolai, Esqs., three defendants-appellees herein, by mailing the copies in a duly addressed envelope, with first class postage prepaid, to Francis A. Nicolai, Esq., counsel of record in the Court of Appeals for the Second Circuit for the three said defendants-appellees at his office at 307 South Main Street, New City, New York 10956.

On Honorable Edith Miller, a defendant-appellee herein, by mailing the copies in a duly addressed envelope, with first class postage prepaid, to her office at 60 Lafayette Street, New York, New York 10013.

On Honorable Morton B. Silberman, a defendant-appellee herein by mailing the copies in a duly addressed envelope, with first class postage prepaid, to his office at Supreme Court, State of New York, New City, New York 10956.

On Honorable J. Edward Lumbard, William H. Mulligan, Thomas J. Meskill, each, Circuit Judges, United States Court of Appeals for the Second Circuit, with first class postage prepaid at their office at U. S. Court House, Foley Square, New York, New York, 10007.

All parties required to be served have been served.

Signed: FRED RENWICK

Subscribed and sworn to before me on the 20 day of Jan., 1978.

Signature and Title

APPENDIX

This Appendix contains a copy of the documents and papers listed in paragraphs 4 and 5, part IV, of petition; namely: (i) Petitioner's affidavit and Statement of Claims and Complaints filed but dismissed in lower Courts, (ii) Copy of mandate of Respondent Court of Appeals, (iii) Copy of Opinion and Judgement of District Court.

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Affidavit and Statement of Claims and Complaints Filed But Dismissed in Lower Courts

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. .....

FRED RENWICK,

Petitioner,

—v.—

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT,

—and—

JANICE RENWICK, FRANCIS A. NICOLAI, THE LAW FIRM OF ZEBROWSKI & NICOLAI, EDITH MILLER, MORTON B. SILBERMAN,

Respondents.

State of .....
County of .....

I, Fred Renwick, plaintiff-petitioner pro se herein, depose and say that pursuant to jurisdiction and statement of case as set forth in Sections I and IV in petition herewith annexed, S. Ct. Rule 31(2), Rule 56(c), FRCiv.P, and paragraph (15) of *Kletschka* v. *Driver,* 411 F. 2d 436 at 447 (1969), I herein allege and show that respondent Court of Appeals erred or abused its discretion in refusing and failing to proceed in exercise of jurisdiction given in this case, on the basis that (i) no genuine triable issues exist,

petitioner is entitled to relief demanded as a matter of law; (ii) defendants acted under color of State Law without judicial jurisdiction or discretion; (iii) every claim of the six set forth in complaint involves rights privileges or immunities guaranteed and secured by the Constitution and Laws of the United States and is nowhere near frivolous; (iv) authorities support petitioner's argument, points and contentions; as follows:

I. No Triable Issues

No genuine triable issue of material fact exists. Petitioner is entitled to relief demanded herein as a matter of law, on the basis that facts pertaining to each claim of the six herein set forth are clear, without possible controversy because each act of the six complained of is a matter of public record in a State Court, and therefore must be admitted and cannot be denied by any party hereto.

II. Color of State Law

Each defendant herein, and all five of them, clearly and beyond controversy acted under color of law, and each and all of the acts and orders of defendants alleged herein were done by defendants, and each of them, not as individuals, but under color and pretense of the statutes, ordinances, regulations, customs and useages of a State, thereby rendering defendants liable to petitioner, Fred Renwick, for redress pursuant to provisions of Title 42, U.S.C., Section 1983, and relief demanded in prayer as a matter of law, on the basis that:

1. Defendants Silberman and Miller both are clothed with Judicial authority of State of New York, and acted

against petitioner, Fred Renwick, under color of their Judicial authority.

2. The defendant private individuals herein named, Janice Renwick, Nicolai and the Law Firm of Zebrowski & Nicolai, all three clearly and beyond controversy acted under color of state law, on the basis of the test set forth in respondent Court of Appeals' own mandate: ". . . Several cases have held that action technically taken by private individuals was "state action" violative of the fourteenth Amendment because of the interaction of the private actors with state officals or policies," *Kletschka* v. *Driver,* supra., at 448.

3. Defendant Janice Renwick acted against petitioner, Fred Renwick, under color and through the County Sheriff of Charles County, Maryland, and under color of statutes, ordinances, regulations, customs or useages and the authority of state Court orders of the States of New Jersey, Maryland and New York. Defendants Janice Renwick, Nicolai and the Law Firm of Zebrowski & Nicolai, all three of them, acted against petitioner under color and through the authority of the County Sheriff of New York County, New York and New York State Court Orders. District Court clearly erred in determining that petitioner's complaint against defendants Nicola and the Law Firm of Zebrowski & Nicolai and Janice Renwick did *not* include the aforesaid defendants' knowingly, wilfully and maliciously sending the County Sheriff to sell petitioner's home and property, and garnishee petitioner's income, all with full intent to do harm to petitioner, without due process of Law as they admittedly did and as set forth in paragraphs 4 and 4 of Sections III and IV hereafter.

4. The defendant State Court Judicial Officers, Silberman and Miller, both clearly acted and made Orders against petitioner knowingly and wilfully under color of State Law, on the basis of U.S. Supreme Court's authorized test: ". . . Misuse of power, possessed by virtue of state law only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law," pursuant to *Screws* v. *United States,* 325 U.S. 91, 107, 109 (1945); *United States* v. *Classic,* 313 U.S. 299, 326; *United States* v. *Price,* 383 U.S. 787 at 794 (1966).

III. Petitioner's Six Claims, Secured Rights

Pursuant to statement of the issues presented for review, paragraph 3, Section IV of petition herewith annexed, on each and all of the six following claims and causes of action under 1983 filed by petitioner in District Court but dismissed therein, the defendants herein named, and each of them, clearly and beyond controversy are persons who subjected petitioner, Fred Renwick, or caused Renwick to be so subjected, to the deprivation of rights, privileges, or immunities secured by the Constitution and Laws of the United States:

1. Each defendant herein named, and all five defendants, absolutely refused, without cause, to grant and either made or effectuated state court orders denying and depriving Fred Renwick's equal protection of the U. S. Supreme Court's mandate: ". . . the courts of South Carolina were *not* precluded by the full faith and credit clause from determining the best interest of these children and entering a decree accordingly," *Ford* v. *Ford,* 371 U.S. 187 at 194 (1962). The defendants choose to make or

effectuate state court orders enforcing the contrary mandate: ". . . the courts of South Carolina (Maryland in petitioner's case) *were* precluded . . .". Absolutely no cause exists, legal or otherwise, why defendants herein named refused and denied to petitioner the lawful custody decision rendered in custody trial court after three days of eyewitness testimony and hearings and where all relevant parties were present before the court and represented by legal counsel.

2. Every defendant herein named, except defendant Miller, clearly and beyond controversy subjected petitioner to the deprivation of his parental rights of visitation and companionship with his four unemancipated minor children, namely Michelle Renwick, Scott Renwick, Leslie Renwick, Alexander Renwick, or caused petitioner to be so subjected, without notice or hearing that he was to be so deprived. The said four defendants compelled Fred Renwick, by Order of the State Court and under threat of contempt of court for failure to do so, to surrender, at Washington, D. C., National Airport, his four children to Janice Renwick and her husband in Ohio Robert Horne, for the children's withdrawal from Calvery Christian School and the Renwick home and family to move and live in Cleveland Heights, Ohio. Petitioner, Fred Renwick, had neither notice nor hearing that from that date forward, he was to be deprived and denied by defendant Janice Renwick, acting under color of state court laws and orders, of the exercise of all parental legal rights of visitation or other means of effectuating meaningful companionship with his children who were ordered by the courts, without hearing, to live in Ohio. Absolutely no cause exists why defendants

deprived and denied to petitioner all legal rights of visitation as well as custody.

3. Each defendant herein named, and all five defendants, absolutely refused to grant and denied to Fred Renwick equal protection of the U. S. Supreme Court's mandate: "... In this case we *must* assume that the petitioners had a bona fide domicil in Nevada," *Williams* v. *North Carolina,* 317 U.S. 287 at 288 and 302 (1942). The defendants choose to assume that petitioner was a vagrant during the time in question, a man without domicil, and made or effectuated state court orders accordingly. No cause exists why defendants choose to substitute their own personal opinions in place of the aforesaid U. S. Supreme Court mandate.

4. Every defendant herein named, and all of them, except defendant Miller, clearly and beyond controversy, subjected petitioner, Fred Renwick, to the deprivation of his property, assets and income, without duly authorized notice or hearing, or caused him to be so subjected, under color, authority and brutal force of the County Sheriff, and caused said sheriff to execute, on the steps of the County Courthouse, a prejudgment sale to the highest public bidder of the Renwick family home and property where petitioner lived with his children, mother and brother. Aforesaid defendants also caused the county sheriff to execute a prejudgment garnishment, again without duly authorized notice or hearing, against petitioner's wages and income. No legal basis exists why defendants caused petitioner to be subjected to the sale of his home and property and the garnishment of his income by the County Sheriff, and petitioner herein clearly sets forth his opposition and

status or condition of compulsory service or involuntary servitude based on alleged indebtedness to defendant Janice Renwick.

5. Every defendant herein named, and all five defendants, absolutely refused to grant to petitioner, Fred Renwick, his rights as father and next friend to his four minor children's rights to due process, notice, hearing and equal protection of the laws set forth in *Ford,* supra, and rights granted by the High Court to the minor children in *Ford.* The defendants herein named made or effectuated state court orders denying and depriving petitioner of his children's rights to the determination and sole trial court decision which has been had, anyplace, ever, where all relevant parties, including defendant Janice Renwick, petitioner, Fred Renwick, all four aforementioned Renwick Children, grandparents, other relatives and friends on both sides all were present in the State trial court for three full days of Court hearings, eye-witness testimony and investigations regarding best interests and welfare and who best should have legal custody of four aforenamed Renwick children. As in *Ford,* supra, no other court ever saw, let alone investigated via a Social Services Child Welfare State Agency, or heard eye-witness testimony in open court in determination of the children's lawful custody. No legal cause exists why the defendants herein named, acting under color of law, deprived and denied petitioner's children's rights of companionship with their father.

6. As a direct and proximate cause of the five deprivations and claims set forth hereinbefore, every defendant, and all five defendants without exception, clearly and beyond controversy has unreasonably and illegally interfered

with the right of petitioner, Fred Renwick, to hold specific employment and to follow his chosen career and profession, or has caused petitioner to be subjected to the deprivation thereof. The aforesaid sheriff's prejudgment public sale on the steps of the county courthouse of petitioner's home and property so traumatized petitioner's brother and mother that the family members irretrievably split and moved to different geographical parts of the United States and thereby took away petitioner's capacity and physical ability to continue his long established practice of working at home; no home, by order of the court, without hearing. The defendants' aforesaid court-created prejudgment debt, creation and imposition of involuntary servitude of petitioner to defendant Janice Renwick and prejudgment income garnishment by the county sheriff took away petitioner's capacity and credit ability to continue meeting his outstanding contractual obligations and lawful debts and caused default of petitioner's contracted commitments. Defendants' court orders stopped further business activity and capability by petitioner. The defendants' aforesaid coercion, intimidation and threats of arrest and incarceration by court officers impersonating students of petitioner, and personal threats of contempt of court and jail if petitioner refused to surrender his aforesaid children to defendant Janice Renwick and Robert Horne for withdrawal from Calvary Christian School and removal to live in Ohio, all without hearing and without compelling cause of State, and defendants' persistent refusal to hear petitioner, and shutting out petitioner's evidence and denying him the opportunity for a trial, and compelling petitioner to work for Janice and Robert Horne until the alleged debt is paid, all without duly authorized hearing took away petitioner's

capacity and abliity to continue producing at the minimum level of services required of him. Defendants' orders and actions, practices and usages of New York State Law, and defendant Miller's maintenance of secret files, together caused petitioner to get fired. The aforesaid actions, individually and together, constitute illegal deprivation of petitioner's secured rights, pursuant to authorities set forth in Section IV herein following.

IV. Argument: Illegal Deprivation of Rights

Pursuant to paragraph (15) of *Kletschka,* supra, and the authorities set forth in the six following paragraphs, petitioner shows: (i) all six of the aforesaid claims and complaints, and each claim of the six, clearly are secured rights, privileges, or immunities guaranteed by the Constitution and Laws of the United States; (ii) Neither claim of the six is nowhere near frivolous; and (iii) every deprivation of the six, individually and together, clearly is prohibited by federal law, and is unconstitutional and illegal:

1. The U. S. Supreme Court's aforesaid mandate of *Ford,* supra, clearly is the Supreme Law of the Land, nowhere near frivolous; and District Court and respondent Court of Appeals clearly erred and abused their discretion in summarily dismissing petitioner's complaint and claims as frivolous, on the basis that, pursuant to Article VI, Clauses 2 and 3, aforesaid mandate of *Ford* clearly is a federal right binding on every State Court Official and Lawyer in the United States, and on the basis that Amendment 14, Section 1, U.S. Constitution, and *Plessy* v. *Ferguson,* 163 U.S. 537 at 543 (1896) forbid and prohibit denial and refusal thereof as done by

defendants herein named. In other words, for the two following reasons, petitioner has been deprived of a right, privilege, or immunity secured by the Constitution and Laws of the United States and defendants acted wholly without judicial jurisdiction in so subjecting petitioner, and every defendant herein named is without immunity and is liable to party injured, Fred Renwick, in an action at law, suit in equity, or other proper proceeding for redress under Title 42, U.S.C., Section 1983:

(a) Pursuant to Supremacy Clause, *Ex-parte Virginia,* 100 U.S. 339 at 346, 348 (1879); *Ex-parte Wall,* 107 U.S. 265 (1882); *Ex-parte Young,* 209 U.S. 123, 204 at 135 (1908); no defendant herein named had jurisdiction, judicial power or immunity from civil suit by virtue of office for the practice of anti-constitutional law, or to have substituted his or her own personal opinion in place of U. S. Supreme Court mandate in *Ford,* supra, and make or minister State Court orders as defendants did effectuating that the full faith and credit clause *does* preclude what the U. S. Supreme Court has mandated that it does *not* preclude. The aforesaid Supremacy Clause and Amendment 14, Section 1, pursuant to *Sail'er Inn, Inc.* v. *Kirby,* 485 P.2d 529 at 530, 534, 535, and more authorities cited in paragraph 4(a) of Section V, petition herewith annexed, prohibit defendants' refusal to grant equal protection of laws and requires federal court to automatically declare void State Court Orders and acts which are prohibited, unconstitutional and illegal, as demanded by petitioner herein.

(b) Any refusal without cause, as defendants herein did, can in no way constitute anything except deprivation,

under color of law, of petitioner's due process rights, pursuant to:

(i) The authorities cited in Note on P. 10 of *Williams* v. *Rhodes,* 89 S. Ct. 5 (1968), which mandate that: ". . . Invidious distinctions cannot be enacted without a violation of the equal protection clause."

(ii) *State ex rel Watts* v. *Watts,* 350 N.Y.S. 2d 285, which determined and mandated that the 14th Amendment prohibits and forbids every defendant herein named from making and enforcing, under color of law, what has been declared to be unconstitutional presumptions against fathers.

(iii) *Bailey* v. *Alabama,* 219 U.S. 219 at 239, 244 (1911), which determined and mandated that the power of State Courts to create presumptions is not a means of escape from constitutional restrictions; what a State may not do directly, it may not do indirectly.

(iv) *Boddie* v. *Connecticut,* 401 U.S. 371, 91 S. Ct. 780, 785 (1971); *Thomas* v. *Thomas,* 50 Misc. 2d 882, 270 N.Y.S. 2d 346; which determine and mandate that defendants' admitted refusal to grant petitioner's right to defend his person and property, and opportunity *before* petitioner is deprived of property, is a deprivation of the due process guarantees.

2. Amendments 1, 9, 14, Section 1 of the U. S. Constitution clearly protect, secure and guarantee petitioner's aforesaid parental rights against refusal and deprivation as done by dependants herein named, under color of law, without duly authorized notice, without hearing, without cause, without compelling reasons of State, by authority

of *Pierce* v. *Society of Sisters,* 268 U.S. 510; *Stanley* v. *Illinois,* 405 U.S. 645 (1972); *State ex rel Watts* v. *Watts,* supra; *In re J. S. & C.,* 324 A.2d 90; *Saizan* v. *Saizan,* 311 So. 2d 281; *Armstrong* v. *Manzo,* 380 U.S. 545 at 550; *White* v. *Minter,* 330 F. Supp. 1194. On the same or similar basis as set forth in paragraphs 1(a), (b) immediately preceeding, every defendant herein named is without immunity and is liable to the party injured, Fred Renwick, in an action at law, suit in equity, or other proper proceeding for redress under Title 42, U.S.C., Section 1983.

3. The U. S. Supreme Court's aforesaid mandate of *Williams* v. *North Carolina,* supra, clearly is the Supreme Law of the Land, nowhere near frivolous, and District Court and respondent Court of Appeals clearly erred and abused their discretion in summarily dismissing petitinoner's complaint and claims as frivolous, on the basis that, pursuant to Article VI, Clauses 2 and 3, aforesaid mandate of *Williams* v. *N. C.,* supra, clearly is a federal right binding on every State Court Official and Lawyer in the United States, and on the basis that Amendment 14, Section 1, U. S. Constitution, and *Plessy,* supra, forbid and prohibit denial and refusal thereof and prohibit substituting and ministering own personal views against Nevada as done by every defendant herein named. Further, petitioner's third claim and complaint are nowhere near frivolous and involve serious deprivation of a secured right, on the basis that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States"; and defendants' admitted refusal, without cause, to recognize or grant full faith and credit to petitioner's lawfully granted

Nevada Court Decree No. 262491 creates and causes a New York State Court Ordered breech, involuntary impairment without due process, of petitioner's legally binding contracts with associates and persons in Nevada who require business and obligations with petitioner to be transacted pursuant to and in accordance with Laws of State of Nevada. The defendants' aforesaid New York State Court ordered breech of petitioner's contracts renders petitioner as well as every defendant herein liable to all Nevada parties injured in an action at law, suit in equity, or other proper proceeding for redress. Thus, on the same or similar basis as set forth in paragraphs 1(a), (b) immediately preceeding, every defendant herein named is without immunity and is liable to Fred Renwick for redress and restitution under 1983.

4. Article IV, Section 1 and Amendment 14, Section 1, U.S. Constitution, clearly protect, secure and guarantee ptitioner's aforesaid property rights against deprivation and prejudgment sheriff's sale as done by defendants herein named, under color of law, without duly authorized notice, without hearing, without cause or compelling reason of State. Pursuant to exclusion clause of *Sistare* v. *Sistare,* 218 U.S. 1 (1909); *Sniadach* v. *Family Finance Corp.,* 395 U.S. 337; *Griffin* v. *Griffin,* 327 U.S. 220 and 328 U.S. 876; *McMeans* v. *Schwartz,* 330 F. Supp. 1397; *Solomon* v. *Beatty,* 347 U.S. 988; prejudgment garnishments are illegal, unconstitutional and automatically deny petitioner's due process rights. Moreover, the equal protection clause of the 14th Amendment prohibits defendants' admitted refusal, without cause, to grant to petitioner the mandates and required presumptions, pursuant

to *Fahrer* v. *Fahrer,* 304 N.E. 2d 411 (Ohio, 1973); *Hunt* v. *Hunt,* 159 N.E. 2d 430 (1959); *Kuert* v. *Kuert,* 292 P. 2d 115 (1956); that defendant Janice Renwick's marriage to aforesaid Robert Horne constitutes election on part of Janice to be supported by that new husband and abandonment by Janice of provisions in her New Jersey ex-parte Court Order for alimony from former husband. Further, the due process clause of the 14th Amendment prohibits, and 1983 provides remedy sought by petitioner herein, against defendant Janice Renwick's admitted subjugation of petitioner to deprivation of equal protection of New Jersey State Law, N. J. Pratice Rule 4:79-6(b); and also prohibits and guarantees protection against the remaining defendants' admitted refusal to set aside aforesaid ex-parte N. J. Order as void on grounds of fraud, pursuant to *Hazel-Atlas Co.* v. *Hartford-Empire Co.,* 322 U.S. 238; *Universal Oil Co.* v. *Root Rfg. Co.,* 382 U.S. 575; and on grounds that any State Court decree which interferes with or is contrary to federal law as set forth in *Williams* v. *North Carolina,* supra, is void under the Supremacy Clause of the U. S. Constitution, pursuant to *Sail'er Inn, Inc.* v. *Kirby,* supra. Consequently, on the same or similar basis as set forth in paragraphs 1(a), (b) immediately preceeding, petitioner's claim and complaint are nowhere near frivolous, and every defendant herein named is without immunity and is liable to petitioner, Fred Renwick, for redress and restitution under 1983.

5. Petitioner's unemancipated minor children clearly are "persons" as are adults within meaning, protection and prohibitions of Amendment 14, Section 1, U. S. Constitution, and aforenamed children's rights to life, liberty and special rights of freedom from neglect, abuse and maltreatment are protected from deprivation as defendants herein named admittedly did in instant case; and the children's court-ordered and involuntary confinement, their commitment to Ohio to live, without cause or compelling reason of State, and against their trial-court determined best interests, cannot be accomplished without deprivation of due process of law, pursuant to *J. L.* v. *Parham,* 412 F. Supp. 112, 146 (1976); *O'Connor* v. *Donaldson,* 422 U.S. 563 U.S., 95 S. Ct. 2486 (1975). Further, pursuant to *Constantine* v. *South-Western Louisiana Institute,* 120 F. Supp. 417 (D.C. La., 1954); *Gelbman* v. *Gelbman,* 245 N.E. 2d 192 (1969), petitioner's right, under federal rules, to protect and sue for his minor children's deprivation of rights under color of law by defendants herein named cannot be abridged by a state statute, and is not prohibited by New York State Law. Consequently, on the same or similar basis as set forth in paragraphs 1(a), (b) immediately preceeding, petitioner's fifth claim and complaint are nowhere near frivolous, and every defendant herein named is without immunity and is liable to petitioner for redress under 1983.

6. Amendments 1 and 14, Section 1, U. S. Constitution, clearly protect, guarantee and secure petitioner's aforesaid rights to liberty, choice of occupation, employment and career against deprivation as done by defendants herein named, under color of law, without duly authorized notice, without hearing, without cause or compelling reason of State, on the basis that ". . . It is the right of every citizen to the United States to follow and lawful

calling, business, or profession he may choose. It cannot be arbitrarily taken away from them any more than their real of personal property can be thus taken," by authority of *Dent* v. *West Virginia,* 129 U.S. 114 at 121, 122 (1889); *United States* v. *Robel,* 389 U.S. 258 (1967); *Greene* v. *McElroy,* 360 U.S. 479, 492 (1959); *Schware* v. *Board of Bar Examiners,* 353 U.S. 232 (1957). Petitioner's sixth claim and complaint are nowhere near frivolous for reasons set forth in paragraph 2(c) of Section V, petition herewith annexed, and on the basis that defendants' useage of State Law to sell petitioner's home and property; split his family, mother and brother; garnish his income; maintain secret files as part of Court records; take his children and send them to Ohio to live; and without cause deprive petitioner of his chosen employment and career all are illegal, unconstitutional and unconscionable; and on the same or similar basis as set forth in paragraphs 1(a), (b) immediately preceeding, every defendant herein named is without immunity and is liable to petitioner for redress and restitution under 1983.

V. Conclusion, Relief

Wherefore, petitioner prays that this Court enter a summary judgment in his favor to the extent set forth in prayer of petition herewith annexed, on the basis that no genuine triable issue of material fact exists, and petitioner is entitled to said declaratory relief as a matter of law, and grant such other and further relief as it deems proper and just.

Signed: Fred Renwick
Fred Renwick

Subscribed and sworn to before me on the 20th day of Jan., 1978.

Signature and Title

To:

Honorable Milton Pollack, Judge
U.S. District Court
U. S. Court House
Foley Square
New York, New York 10007

Honorable Edith Miller, Judge
Family Court
60 Lafayette Street
New York, New York 10013

Honorable Morton B. Silberman, Judge
Supreme Court, State of New York
New City, New York 10956

Honorable J. Edward Lumbard, Judge
U.S. Court of Appeals for the Second Circuit
U.S. Court House
Foley Square
New York, New York 10007

Honorable William H. Mulligan, Judge
U.S. Court of Appeals for the Second Circuit
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New York, New York 10007

Affidavit and Statement of Claims and Complaints Filed But Dismissed in Lower Courts

Honorable Thomas J. Meskill, Judge
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Order of United States Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

77-7315

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 28th day of October one thousand nine hundred and seventy-seven.

Present:

HON. J. EDWARD LUMBARD,
HON. WILLIAM H. MULLIGAN,
HON. THOMAS J. MESKILL,
Circuit Judges.

FRED RENWICK,
Appellant,

—against—

JANICE RENWICK, ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of New York.

The motion to dismiss the appeal is granted. The district court found that it was without subject matter juris-

Order of United States Court of Appeals

diction because the claims presented were "frivolous and absolutely devoid of merit." We find no issue of any substance presented in this appeal.

/s/ J. Edward Lumbard
J. Edward Lumbard

/s/ William H. Mulligan
William H. Mulligan

/s/ Thomas J. Meskill
Thomas J. Meskill

Order

UNITED STATES DISTRICT COURT

Southern District of New York

77 Civ. 782 (MP)

Fred Renwick,

Plaintiff,

—against—

Janice Renwick, et al.,

Defendants.

This cause came on for hearing on the 13th day of May, 1977, on defendants' motion to dismiss the action on the following grounds:

1. That defendants, Family Court Judge Edith Miller and New York State Supreme Court Justice Morton Silberman, are immune from suit based upon official acts performed in connection with their judicial duties; and

2. That defendants, Assistant Corporation Counsel Mark Weinstein and Probation Officer Evelyn Barnett, are court officers who are immune from suit for official acts performed in connection with a claim made against plaintiff in Family Court under the Uniform Support of Dependents Law; and the Court havng heard the arguments of W. Bernard Richland, counsel for defendants, Weinstein and Barnett, and the plaintiff, pro se, and being fully advised, it is

Order

Ordered, that the complaint against the defendants, Edith Miller, Morton Silberman, Mark Weinstein and Evelyn Barnett, be and is hereby dismissed.

Dated: New York, New York
May 23rd, 1977

/s/ MILTON POLLACK
Milton Pollack

Endorsement of May 23, 1977

FRED RENWICK v. JANICE RENWICK, et al. 77 Civ. 782 (MP)

Plaintiff seeks to make proceedings in two civil suits brought against him in state court the subject of a federal civil rights action pursuant to 42 U.S.C. § 1983. Defendants named in this action include two state court judges, a probation officer, and an Assistant Corporation Counsel. For the reasons appearing hereafter the complaint is dismissed as against those four defendants.

The claims asserted against Judges Miller and Silberman, probation officer Barnett, and Assistant Corporation Counsel Weinstein arise out of their performance of official functions. No allegation is made of malice. Consequently, they are immune from suit for damages. *Pierson* v. *Ray*, 386 U.S. 547 (1967); *Imbler* v. *Pachtman*, 424 U.S. 409 (1976); *Flood* v. *Harrington*, 532 F.2d 1248 (9th Cir. 1976); *Wood* v. *Strickland*, 420 U.S. 308 (1975); *Harmon* v. *Superior Court*, 329 F.2d 154 (1964).

Injunctive and declaratory relief against enforcement of the resultant state court judgments against plaintiff would be inappropriate in light of the considerations expressed in *Judice* v *Vail*, 45 L.W. 4269 (U.S., March 22, 1977).

In addition, "Complaints relying on the civil rights statutes are plainly insufficient unless they contain some specific allegations of fact indicating a deprivation of civil rights, rather than state simple conclusions." *Koch* v. *Yunich*, 533 F.2d 80, 85 (2d Cir. 1976). That test is not met here.

Moreover, plaintiff seeks to use § 1983 to obtain federal court review of his state court matrimonial litigation. Mere alleged errors in a state court decision do not furnish a predicate for a § 1983 claim. *Mayes* v. *Honn*, 542 F.2d 822 (10th Cir. 1976); *Adkins* v. *Underwood*, 520 F.2d 890 (7th Cir.), *cert. denied*, 423 U.S. 1017 (1975).

Endorsement of June 10, 1977

FRED RENWICK v. JANICE RENWICK, et al. 77 Civ. 782

Plaintiff has moved pursuant to Fed. R. Civ. P. 56 for summary judgment against defendants Francis A. Nicolai and Zebrowski & Nicolai. For the reasons appearing hereafter plaintiff's motion is denied and the complaint against these defendants is dismissed for lack of subject matter jurisdiction.

A district court is obliged to dismiss an action *sua sponte* at any stage of a proceeding at which it appears that subject matter jurisdiction is lacking. *Bernstein* v. *Universal Pictures, Inc.*, 517 F.2d 976, 979 (2d Cir. 1975). Dismissal of a complaint for lack of jurisdiction of the subject matter is appropriate where the claim is frivolous or "'so attenuated and unsubstantial as to be absolutely devoid of merit.'" *Baker* v. *Carr*, 369 U.S. 186, 199 (1962), *quoting Newburyport Water Co.* v. *Newburyport*, 193 U.S. 561, 579 (1904). *See, e.g., City of Kenosha* v. *Bruno*, 412 U.S. 507 (1973) (no subject matter jurisdiction where an action purportedly under 42 U.S.C. § 1983 was brought against an entity which was not a "person" within the meaning of § 1983).

The claims against Mr. Nicolai, Esq. and Zebrowski & Nicolai in the present case are frivolous and absolutely devoid of merit. The claims against them purport to be pursuant to 42 U.S.C. § 1983 for deprivation of constitutional rights under color of law. The defendants are attorneys who represented plaintiff's ex-wife in state court litigation in which she sought support payments from him. The allegations against them are insufficient to meet the "under color of state law" requirement of § 1983.

"It is established that a private attorney, while participating in the trial of private state court action, is not

acting under color of state law" and so is not liable under the civil rights acts. *Hansen* v. *Ahlgrimm*, 520 F.2d 768, 770 (7th Cir. 1975). If § 1983 were available to challenge private attorneys for having utilized authorized judicial procedures to present the state courts with a claim for relief in private litigation, "[s]uch an expansive view of state action would subject all who utilize the courts to litigate and enforce private claims to possible Civil Rights liability in the federal forum at any time a dissatisfied opponent claimed the challenged procedure failed to comport with constitutional guarantees." *Id.* at 771. Plaintiff's unhappiness with the outcome of his state court matrimonial litigation does not give rise to a claim against the opposing attorneys cognizable under § 1983. *Accord, Hill* v. *McClellan*, 490 F.2d 859 (5th Cir. 1974).

Plaintiff does not contend that these defendants conspired with state officials. Such a contention would be insufficient in any event to satisfy the "under color of state law" requirement in light of this Court's previous holding that the public officials named in the complaint are immune from liability. *Hansen* v. *Ahlgrimm, supra; Hill* v. *McClellan, supra.*

Accordingly, plaintiff's motion for summary judgment is denied and the complaint as against defendants Nicolai and Zebrowski & Nicolai is dismissed.

So ordered.

June 10, 1977

/s/ MILTON POLLACK
Milton Pollack
U.S.D.J.

Endorsement of June 10, 1977

FRED RENWICK v. JANICE RENWICK, et al. 77 Civ. 782

Plaintiff has moved pursuant to Fed. R. Civ. P. 55(a) for entry of a default and pursuant to Rule 55(b) for entry of a default judgment against defendant Janice Renwick on the ground that she has failed to answer the complaint within the time prescribed by the federal rules. For the reasons appearing hereafter plaintiff's motion is denied and the complaint is dismissed as against defendant Renwick for lack of subject matter jurisdiction.

A district court is obliged to dismiss an action *sua sponte* at any stage of a proceeding at which it appears that subject matter jurisdiction is lacking. *Bernstein* v. *Universal Pictures, Inc.*, 517 F.2d 976, 979 (2d Cir. 1975). Dismissal of a complaint for lack of jurisdiction of the subject matter is appropriate where the claim is frivolous or "'so attenuated and unsubstantial as to be absolutely devoid of merit.'" *Baker* v. *Carr*, 369 U.S. 186, 199 (1962), *quoting Newburyport Water Co.* v. *Newburyport*, 193 U.S. 561, 579 (1904). *See, e.g., City of Kenosha* v. *Bruno*, 412 U.S. 507 (1973) (no subject matter jurisdiction where an action purportedly under 42 U.S.C. § 1983 was brought against an entity which was not a "person" within the meaning of § 1983).

The claim against Mrs. Renwick in the present case is frivolous and absolutely devoid of merit. The claim against her purports to be pursuant to 42 U.S.C. § 1983 for deprivation of constitutional rights under color of law. The defendant is plaintiff's ex-wife; she is alleged merely to have secured orders for support payments against him in state court. That allegation is insufficient to meet the "under color of state law" requirement of § 1983. *See*

McGuane v. *Chenango Court, Inc.*, 431 F.2d 1189 (2d Cir. 1970), *cert. denied*, 401 U.S. 994 (1971).

Plaintiff does not contend that Mrs. Renwick conspired with state officials. Such a contention would be insufficient in any event to satisfy the "under color of state law" requirement in light of this Court's previous holding herein that the public official defendants named herein are immune from liability. *See, e.g., Hansen* v. *Ahlgrimm*, 520 F.2d 768 (7th Cir. 1975); *Hill* v. *McClellan*, 490 F.2d 859 (5th Cir. 1974).

Accordingly, entry of default is denied and the complaint as against defendant Renwick is dismissed.

So ordered.

June 10, 1977

/s/ MILTON POLLACK
Milton Pollack
U.S.D.J.